



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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बुधवार, 04 मार्च, 2020 / 14 फाल्गुन, 1941

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हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dated, the 13th February, 2020*

**No. Shram(A) 6-7/2019 (Awards) L.C. Shimla.**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court, Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	122/2016	Sh. Rakesh Inder Nath	The Commissioner, M.C. Shimla H.P.	16-12-2019
2.	88/2019	Sh. Amit Kumar	Distt. Manager, H.P. State Copt. Bank.	18-12-2019
3.	89/2019	Sh. Akshay Kumar	Distt. Manager, H.P. State Copt. Bank.	18-12-2019
4.	94/2019	Smt. Pooja Sharma	Ex. Director, open shelter project, new Shimla.	18-12-2019
5.	96/2013	Sh. Balwinder Kaur	MD A&A Modular Systems, Barotiwala, Solan.	20-12-2019
6.	90/2013	Smt. Soni Kanti	MD A&A Modular Systems, Barotiwala, Solan.	20-12-2019
7.	172/2018	Sh. Amrik Singh	Japshi Chem Pharmaceuticals (P) Ltd.	20-12-2019
8.	46/2016	Sh. Ramesh Kumar	Secy. IPH Division & Ors.	23-12-2019
9.	01/2018	Sh. Arun Thakur & Ors.	M/s Zen Techonologies Ltd.	27-12-2019

By order,

NISHA SINGH, IAS  
Addl.Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SH. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Reference No. 122 of 2016  
Instituted on 12-12-2016  
Decided on 16-12-2019

Rakesh Inder Nath S/o Shri Dhani Ram, R/o Ward No.5, Nalagarh, District Solan, H.P.

..Petitioner.

*VERSUS*

Municipal Corporation, Shimla-1 through its Commissioner

..Respondent.

**Reference under section 10 of the Industrial Disputes Act**

For petitioner : Shri R.K Khidta, Advocate

For respondents : Shri Yadvinder Thakur, Advocate

## AWARD

The following reference was received for adjudication from the appropriate Government:—

**“Whether alleged termination of services of Shri Rakesh Inder Nath s/o Shri Dhani Ram R/o Ward No. 5, Nalagarh, District Solan, H.P. during the year 1994 by the Commissioner, Municipal Corporation, Shimla who had worked as beldar on daily wages with above employer and has raised his industrial dispute after about 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

2. In short the case propounded by the petitioner in his statement of claim is that he was appointed as T-mate by the respondent in the year 1984. He had been performing his duties honestly and deliberately till the year 1993 when the petitioner suddenly fell ill due to the stress and strain of work.

3. This simple ailment further aggravated into mental illness. Consequently, the petitioner remained under treatment in various hospitals in Punjab including Tapa Mandi, Mangewal, Anandpur Sahib and Ropar. A huge amount of money had to be spent and the petitioner also incurred huge financial losses. Now, the petitioner has been found to be medically fit to resume his duties.

4. The petitioner has been making several representations to the respondent for allowing him to resume his duties, but to no avail. The petitioner had also approached the Labour Officer, Shimla for conciliation, but the petitioner's grievance could not be resolved and the conciliation proceedings failed to yield any fruitful results. The action of the respondent in not allowing the petitioner to resume his duties is highly illegal and arbitrary and deserves to be set aside. The petitioner has been made to suffer for no fault of his own. The action of the respondent is thus stated to be bad in the eyes of law and highly illegal. The petitioner thus claims his reinstatement with all consequential benefits including back-wages.

5. While contesting the claim the respondent corporation has tried to portray that no person by the name of Rakesh Inder Nath s/o Dhani Ram had worked with them, but, one Rakesh s/o Dhani Ram had worked from 21.9.1985 to 10.1.1989 and thereafter from 21.3.1990 to 20.9.1992, where after, he had left the job on his own sweet will.

6. The respondents deny that any record pertaining to the illness of the petitioner was submitted to their office. The respondents, however, have placed on record the details of the period when the petitioner remained engaged with the respondent corporation, which has been reflected thus:

Period	Days
21-9-1985 to 31-12-1985	87
1-1-1986 to 31-12-1986	329
1-1-1987 to 31-12-1987	365
1-1-1988 to 31-12-1988	366

1-1-1989 to 10-1-1989	10
21-3-1990 to 31-12-1990	286
1-1-1991 to 31-12-1991	296
1-1-1992 to 20-9-1992	243

7. As per the respondent the petitioner had never informed the corporation about his illness nor he had ever submitted any fitness certificate to resume his duties. They also deny that any representation was ever received from the petitioner for resumption of his duties. The respondents, however, further reiterated that the petitioner had left the job of his own sweet will.

8. It is thus prayed that the reference be dismissed being devoid of any merits.

9. While filing rejoinder, the petitioner controverted the averments in the reply filed by respondents and further reiterated those in the statement of claim.

10. I notice that on 14-5-2018, the following issues came to be framed by my Learned Predecessor:

- (1) Whether the termination of the services of the petitioner by the respondent during the year 1994 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*
- (2) If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..*OPR.*
- (3) Relief:

11. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No.1 : No

Issue No. 2 : However, the petitioner is entitled to onetime costs of Rs. one lakhs

Relief : Reference is answered against the petitioner per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 & 2:*

12. Both these issues being correlated and intermingled are being taken up together for decision.

13. The petitioner while claiming illegal termination has himself averred that he worked with the respondent corporation from 1984 till 1993. He fell ill due to the stress and strain of work, which finally culminated into a mental problem. He remained under treatment for the said ailment in various hospitals *i.e* Tapa Mandi, Mangewal, Anandpur Sahib and Ropar in Punjab.

After recovery, he made various representations to the respondents to allow him to resume his duties but to no avail.

14. To substantiate his contention, the petitioner has placed on record a certificate issued by PW-2, one Doctor Tajender Singh *vide* Ex. PW-2/A to show that he was undergoing treatment and was suffering with some chronic psychotic illness. Per this certificate the petitioner was under treatment from 21-8-2004 to 13-10-2005. So is the deposition of the Doctor who has appeared as PW-2.

15. The petitioner has also placed on record a purported demand notice dated 16-11-2005, *vide* Ex. PW-1/B. Strangely, the demand notice was raised by the petitioner for the first time after about twelve years. No doubt the petitioner claims he was ailing right from 1993, but the evidence placed on record only show that he was undergoing treatment with Doctor Tajender Singh (PW-2) only *w.e.f.* 21-8-2004 to 13-10-2005. No endeavor has been made by the petitioner to remotely show that even during 1993 till 2004 he was undergoing treatment because of some ailment. Another strange fact is highlighted from the deposition of the petitioner himself, and it is that he had never submitted any application to the respondent regarding his illness. There is not even an iota of evidence that he had ever informed or sought leave because of the illness at any point of time between 1993 and 2005. So much so the petitioner had not even bothered to inform the respondent about his illness. The petitioner who was working with the respondent corporation, which happens to be an instrumentality of the state, the least which was required from the petitioner was to inform the employer about his ailment and his absence because of the same.

16. The petitioner undoubtedly had been working with the respondent from 1985 till 20-2-1995. The mandays annexed by the respondents also testify the said fact. Though, the respondents have taken an objection that one Rakesh Inder Nath s/o Dhani Ram had been working with them, but, the evidence on record shows that it was in fact the petitioner Rakesh s/o Dhani Ram who had been working with the respondent. The petitioner had also admittedly completed 240 days prior to his alleged termination. The case set up by the respondent however, is that the petitioner left the job of his own sweet will.

17. Since, it is the case of the petitioner himself that he was ailing and had to leave the job, it cannot be said that the services of the petitioner were terminated by the respondents, to fall within the domain of “retrenchment”.

18. However, the other thing which comes to the fore is that even the respondent did not bother to either issued a show cause notice to the petitioner for his willful absence or institute any enquiry for willful absence after 20.9.1992. In normal circumstances the respondent at least should have issued a notice or initiated an enquiry for willful absence. However, the same was also not done.

19. The petitioner however, on the other hand has failed to prove that he was undergoing treatment from 1992 till 2004. Even otherwise the dispute for the first time was raised by the petitioner on 16-11-2005 (Ex. PW-1/B) which is after about 12 years of his ailment. Nothing has been produced on record to show that the petitioner had kept the dispute alive even during 1992 and 2004. Therefore, ordering the reinstatement of the petitioner under these facts and circumstances cannot be countenanced as the termination of the petitioner does not *stricto- senso* be termed as “retrenchment”.

20. However, the respondents have also failed to even take requisite recourse for willful absence after 20-9-1992. Moreover, since the respondents have raised the plea of

abandonment, but, have also failed to prove the same. It can be inferred from the testimony of RW-1 Shri Saksham Sharma who has in uncertain terms deposed that no show cause notice or enquiry was ever initiated against the petitioner for willful absence.

21. It is by now well settled that abandonment is a plea of facts and the same has to be established by leading evidence as has been held by our own **Hon'ble High Court in State of H.P. Vs. Batag Ram and another [(2007) STPL (HJ) 1390 (HP)]**. In the case in hand the plea of abandonment has also not been proved by the respondents by leading any evidence, already discussed hereinabove *supra*. At least for willful absence the respondents should have issued a show cause notice to the petitioner. Even that was not done. The respondent/corporation being an instrumentality of the "State" should at least have kept this basic thing in mind. The state and its instrumentals have to act as a model employers. They are not simple employers.

22. Thus, even while holding that the termination of the petitioner is not violative of the provisions of the Act, it is however held that the respondent corporation shall pay compensation of Rs. one lakh to the petitioner, as it had failed to comply with the basic requirements postulated for willful absence. A simple notice at that stage would have sufficed, more particularly since the respondents corporation is an instrumentality of the State and for having raised a specific plea of abandonment which too has not been proved by the respondent before this Court. Both the issues are thus decided accordingly.

**RELIEF:**

For the foregoing reasons discussed hereinabove *supra*, the claim petition filed by the petitioner is dismissed. The respondents corporation is however directed to pay a sum of Rs. one lakh to the petitioner as compensation/costs as it had failed to comply with the basic requirements postulated for willful absence and also failed to prove the plea of abandonment so raised by it. The reference is answered accordingly. Let a copy of this order/award be sent to the appropriate Government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 16th day of December, 2019.

Sd/-  
(CHIRAG BHANU SINGH),  
Presiding Judge, Industrial Tribunal-cum-Labour Court,  
Shimla.

Ref. 88 of 2019

Sh. Amit Kumar

V/s

Distt. Manager H.P. State Copt. Bank Ltd.

18-12-2019

Present : None for petitioner.  
Sh. Jagat Shayam, Ld. Vice Csl. for respondent.

Despite innumerable opportunities no statement of claim has been filed. In fact none has appeared even today before this court. Once the Ld. Counsel had appeared and sought time to filed claim. Therefore none has appeared, nor any claim has been filed. It is thus apparent that the petitioner is not interested to prosecute the lis any further. The Industrial Dispute so raised seems to have ceased to exist. The reference is thus dismissed, as having not been pressed. Ordered accordingly. Be consigned to record after completion. Let, the copy of this award be sent to appropriate Government.

Announced  
18-12-2019

Sd/-

(CHIRAG BHANU SINGH),  
*Presiding Judge Labour Court, Shimla.*

Ref. 89 of 2019

Sh. Akshya Kumar

V/s

Distt. Manager H.P. State Copt. Bank Ltd.

18-12-2019

Present : None for petitioner.  
Sh. Jagat Shayam, Ld. Vice Csl. for respondent.

Despite innumerable opportunities no statement of claim has been filed. In fact none has appeared even today before this court. Once the Ld. Counsel had appeared and sought time to filed claim. Therefore none has appeared, nor any claim has been filed. It is thus apparent that the petitioner is not interested to prosecute the lis any further. The Industrial Dispute so raised seems to have ceased to exist. The reference is thus dismissed, as having not been pressed. Ordered accordingly. Be consigned to record after completion. Let, the copy of this award be sent to appropriate Government.

Announced .  
18-12-2019

Sd/-

(CHIRAG BHANU SINGH),  
*Presiding Judge Labour Court, Shimla.*

Smt. Pooja Sharma

V/s

Ex. Director Open Shelter Project, New Shimla.

18-12-2019

Present : None.

Notices issued to the petitioner have been received back after service. As per the tracking report of the postal department the notices stand delivered. The petitioner thus has been duly served for today. However, none has put in appearance on behalf of the petitioner. The matter has been called twice. It thus seems that the "Industrial Dispute" under reference is no longer in existence and the petitioner is not interested to prosecute the lis any further. The reference is thus dismissed as not having been pressed, at this stage. Disposed off accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. Be consigned to records after completion.

Announced  
18-12-2019.

Sd/-  
(CHIRAG BHANU SINGH),  
Presiding Judge Labour Court, Shimla.

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**IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT NALARAGH**

Reference No. 96 of 2013  
Instituted on 16-11-2013  
Decided on 20-12-2019

Balwinder Kaur w/o Shri Vijay Kumar, r/o Ward No.10, Telian Makan, Barotiwala,  
Tehsil Baddi, District Solan (H.P.).  
..Petitioner.

**VERSUS**

The Managing Director, M/s A & A Modular Systems, Village Saniwala, Barotiwala,  
Tehsil Kasauli, Distt. Solan (H.P.).  
..Respondent.

**Reference under section 10 of the Industrial Disputes Act**

For petitioner : Shri Vishal Sharma, Advocate  
For respondent : Shri Rajiv Sharma, Advocate

**AWARD**

The following reference was received for adjudication from the appropriate Government:—

**"Whether termination of the services of Smt. Balwinder Kaur w/o Shri Vijay Kumar, r/o Ward No.10, Telian Makan, Barotiwala, Tehsil Baddi, Distt. Solan, H.P. w.e.f. 25-06-2012, by the employer/Managing Director, M/s A & A Modular Systems, Village Sansiwala, Barotiwala, Tehsil Kasauli, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"**

2. In accordant to the reference the petitioner avers in the statement of claim that she came to be employed as a helper in the respondent company in May 2007. Since then she has



been working with full devotion and honesty. The respondent company had started creating labour problems and were frequently violating the labour laws in the company. The petitioner along-with some other co-workers had made a representation before the management regarding their day to day problems.

3. It is further the case of the petitioner that in pursuance to the aforesaid representation the respondent started harassing the petitioner in one way or the other. The respondent had fraudulently with a malafide intention issued a show cause notice to the petitioner blaming her for having wrongly entered the packaging section and when she was directed to join her duties at the sanding section she refused to follow the orders of her superiors and started misbehaving with her superiors. Per the petitioner no show cause notice had been served on her.

4. The respondent company had falsely tried to implicate the petitioner in a false case regarding allegations of quarrel and misbehavior with one of her superior's Shri P.C. Dogra. The petitioner on the contrary avers that it was Mr. P.C. Dogra and one Shri Raghbir Singh and Mamta Bhatt who had misbehaved with the petitioner.

5. It is further the grouse of the petitioner that the respondent company had appointed one Shri Ram Chander, Advocate Nalagarh as an enquiry officer without the consent of the petitioner. The enquiry officer had also refused the services of a defence assistant to the petitioner while holding the enquiry. The enquiry is further stated to be against the principles of natural justice as no reasonable opportunity of being heard was afforded to the petitioner.

6. It is also the case of the petitioner that no enquiry report was supplied to her by the enquiry officer or the respondent company. The termination of the petitioner is thus stated to be illegal and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The petitioner also claims that since her illegal termination she is unemployed and unable to maintain her family.

7. It is thus prayed that the termination of the petitioner be set aside and quashed and the respondent be directed to reinstate the petitioner with all consequential benefits.

8. While contesting the claim the respondents have raised preliminary objections vis-a-vis maintainability and the petitioner having concealed material facts from this Court.

9. It is also averred by the respondent that the petitioner indulged in grave misconduct during the course of her employment. As a sequel the respondent management had held an independent enquiry into the misconduct as per the Industrial Employment (Standing Orders) H.P. Rules, 1973 and the amended Rules-1991 as applicable to the respondent company. The principles of natural justice had been fully complied with while ordering the enquiry and even the enquiry officer had afforded full opportunity to the petitioner. The enquiry was held in a lawful manner and that the petitioner is gainfully employed and is earning more than the amount which she was earning from the respondent management.

10. On merits too the contentions are reiterated. Per the respondents the petitioner has not approached this Court with clean hands. She has alleged wrong facts. The petitioner had committed grave misconduct on 16-12-2011 inside the factory premises and had quarreled with senior officers of the factory. It was on this score that she had been chargesheeted. As averred in the preliminary submissions the petitioner was chargesheeted and an independent enquiry officer namely Shri Ram Chander, Advocate Nalagarh had been asked to enquire into the matter. The enquiry officer had issued a notice to the petitioner and she had duly participated in the enquiry proceedings. The enquiry was conducted as per the model standing orders and the principles of

natural justice were fully complied with. The petitioner was afforded full opportunity to lead her evidence in defence and the statement so given by the petitioner was properly recorded by the enquiry officer.

11. The report submitted by the enquiry officer on 15-5-2012 holding the petitioner guilty ended up with the issuance of a 2nd show cause notice in the shape of proposed penalty letter on 23-5-2012. Eventually dismissal order was passed against the petitioner on 25-6-2012. The respondents have annexed along-with the reply, the complaint, chargesheet, letter of enquiry, notices issued by the enquiry officer and the entire proceedings of the enquiry along-with the report of the enquiry officer, 2nd show cause notice and the dismissal letter.

12. It is thus prayed that the claim be dismissed being devoid of any merits.

13. While filing rejoinder, the petitioner controverted the averments made in the reply and further reiterated those in the statement of claim.

14. I notice that on 26-5-2017, the following preliminary issues came to be framed by my Learned Predecessor.

(1) Whether the domestic inquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ..OPP.

(2) Relief.

15. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1 : No. However, punishment held to be disproportionate and hence quashed and set aside.

Relief : Reference partly answered in favour of the petitioner and against the respondent per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issues No. 1:*

16. Though, the reference pertains to the termination of the services of the petitioner *w.e.f.* 25-6-2012 which is purported to be in violation of the provisions of the Act, but, the case set up by the respondent in uncertain terms is that the petitioner was dismissed from service in pursuance to an independent enquiry held as per the Industrial Employment (Standing Orders) H.P. rules 1973, as amended from time to time and as per the principles of natural justice, and that too for having committed grave misconduct within the factory premises on 16-12-2011.

17. As per the allegations in the departmental proceedings on the said date the petitioner and one Soni Kanti had quarreled with the senior officer in the factory. They had been asked to report at the sanding section, whereas the petitioner and the other co-worker wanted to work in the packaging section. Per the respondent the petitioner was chargesheeted on 17-12-2011. She was called to file the reply within seventy two hours, but, she had failed to do so. Though, the respondent could have terminated her forth-with, but, keeping in view the principles of natural justice, the management thought it proper to hold an independent enquiry and consequently one Shri Ram Chander, Advocate Nalagarh came to be appointed as an enquiry officer.

18. The enquiry officer RW-1 *vide* his enquiry report dated 15-5-2012 (Ex. RW-1/F) held the petitioner to be guilty of misconduct. The respondent had thereupon issued a show cause notice in the shape of proposed penalty letter on 23-5-2012 (Ex. RW-2/B). The petitioner did not file any reply thereof and eventually she came to be dismissed *vide* an order dated 25-6-2012 (Ex. RW-2/C).

19. Though, the petitioner claims termination simplicitor, but, in the statement of claim the petitioner has tried to portray that the respondent company had fraudulently and with the malafide intention issued a show cause notice to the petitioner regarding some misdemeanor, but she had never been served with any show cause notice. Per the petitioner the respondent company had fabricated a false allegation of quarrel and misbehavior with one of her superior Shri P.C. Dogra. It is also the averred case of the petitioner that the enquiry officer was appointed without any consent of the petitioner. The enquiry officer had made no efforts to provide a defence assistant to the petitioner. The enquiry was against the principles of natural justice and no enquiry report was ever supplied to her either by the enquiry officer or the respondent company.

20. This is what the petitioner has also reiterated while appearing as her own witness, as PW-1. Her affidavit on record is nothing but the reiteration of the pleadings on record.

21. Though, the petitioner in her cross-examination has denied that the chargesheet was ever issued to her. She also denies that any enquiry was also held against her. As per the petitioner certain documents were got signed by her. She goes to the extent of denying that RW-1 Shri Ram Chander, Advocate had conducted an enquiry. She even denies having been summoned by the enquiry officer. However, she admits having signed the enquiry proceedings on 27-4-2012 (Mark R-3). She also denies having received the enquiry report.

22. Per contra the enquiry officer while appearing as RW-1 has deposed that after having been appointed as an enquiry officer on 24-2-2012, he fixed the enquiry on 3-3-2012, but, the petitioner did not join the proceedings. She was again summoned for 20-3-2012, again the petitioner did not join. Fresh notices were issued for 26-4-2012 and the petitioner appeared. It is then the enquiry proceeded further. The enquiry was conducted as per the Model Standing Orders and principles of natural justice and he afforded opportunity to the petitioner to produce any person to defend her case, but, the petitioner had agreed to defend herself personally. She was provided full opportunity to cross-examine the witnesses and the day to day proceedings were supplied to her. After the enquiry he had submitted his report to the management (Ex. RW-1/F) along-with the enquiry proceedings (Ex. RW-1/D). Ex. RW-1/E is the statement of witnesses examined by him during the course of enquiry.

23. In fact the proceedings initiated on 26-4-2012 also bears the signatures of the petitioner. As per this document the petitioner had agreed to defend her case personally. In fact the perusal of Ex. RW-1/E, the deposition of the witnesses also bear the signatures of the petitioner. The proceedings dated 27-4-2012 also bear the signatures of the petitioner. As per the noting also the copies of the testimonies of PW-1 to PW-3 were supplied to the parties and next date was fixed for 28.4.2012.

24. The 2nd show cause notice had been issued by RW-2 *vide* Ex. RW-2/B on 23-5-2012. Though, the petitioner denies that the copy of the enquiry report had been supplied to her but the 2nd show cause notice clearly shows that the copy of the enquiry report dated 15-5-2012 (eight pages) had been annexed along-with 2nd show cause notice as is clear from Ex. RW-2/B on record, which has also been duly signed by the petitioner. It is thus clear that even the enquiry report had been supplied to the petitioner.

25. In this sense of the matter it is more than apparent that the domestic enquiry held against the petitioner was valid and as per the requirements of law. One thing which comes to the fore, however, is that the dismissal was ordered on the basis of a verbal spat between the petitioner and one soni Kanti with one Shri P.C Dogra, the incharge of the packaging section. The tiff was apparently that the petitioner wanted to work in the packaging section whereas she was sent to the sanding section. Over and apart there is nothing which is alleged against the petitioner or the other worker. The RW-2 has placed on record certain letters mark A-5 to Mark A-8 to suggest that the petitioner and the Soni Kanti had been trying to create indiscipline amongst other workers and as such their past conduct was also taken into consideration while ordering dismissal, but, strangely all these letters pertain to November/December 2011. The show cause is also of December 2011. Moreover, the 2nd show cause notice Ex. RW-2/B dated 23-5-2012 nowhere talks about the aforesaid acts of misconduct and misdemeanor on the part of the petitioner. The moot question thus is whether the order of dismissal in the aforesaid circumstances was justified and was the punishment commensurate with the charged misconduct.

26. Even, if the testimony of the three witnesses who have appeared before the enquiry officer is taken at its face value, I am afraid the order of dismissal was indeed not justified. A verbal spat and that too demanding a change of section did not at least entail the punishment of dismissal. It is indeed unjustified to say the least. Defiance of instructions from the management or a trivial misconduct or a pardonable negligence can certainly not be visited with severe penalty of dismissal from service. It was neither a case of misappropriation, theft or *prima-facie* dereliction of duties. In the given facts and circumstances of the case the punishment of dismissal imposed by the respondent management is shockingly disproportionate to the charge which has been proved before the disciplinary authority. The punishment imposed is too harsh.

27. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30-4-2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

28. Thus while holding that the respondent has conducted the domestic enquiry as per the model standing orders and the principles of natural justice, it is however held that the punishment imposed by the disciplinary authority is disproportionate to the misconduct alleged. In the facts and circumstances of the case so much so keeping in view the conduct of the petitioner and the allegations in the chargesheet, it is held that she shall not be entitled to any back-wages. The denial of back-wages is sufficient punishment to be imposed upon the workman, for the alleged misconduct dated 16-12-2011. The issue is thus decided accordingly.

#### *RELIEF:*

For the foregoing reasons discussed hereinabove *supra*, the reference is partly answered in favour of the petitioner and against the respondent while holding that the respondent have conducted the enquiry in a fair manner and as per the provisions of the model standing orders, but, the penalty imposed by the respondent management is however held to be disproportionate

and is quashed and set aside. The petitioner is ordered to be reinstated in service. She shall be entitled to seniority and continuity from the date of her dismissal, however, without any back wages. Ordered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette and for further necessary action. File, after completion, be consigned to records.

Announced in the open Court today this 20th day of December, 2019.

Sd/-  
(CHIRAG BHANU SINGH),  
Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.

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**IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT NALARAGH.**

Reference No. 90 of 2013  
Instituted on 14-11-2013  
Decided on 20-12-2019

Soni Kanti w/o Shri Devi Prasad r/o Ward No.1, Maranwala, P.O Nanakpur Tehsil Kalka, District Panchkula, Haryana. ..Petitioner.

*VERSUS*

The Managing Director, M/s A & A Modular Systems, Village Saniwala, Barotiwala, Tehsil Kasauli, Distt. Solan (H.P.). ..Respondent.

**Reference under section 10 of the Industrial Disputes Act**

For petitioner : Shri Vishal Sharma, Advocate.  
For respondent : Shri Rajiv Sharma, Advocate.

**AWARD**

The following reference was received for adjudication from the appropriate government :—

**“Whether termination of the services of Smt. Soni Kanti w/o Shri Devi Prasad r/o Ward No.1, Maranwala, P.O Nanakpur Tehsil Kalka, District Panchkula Haryana w.e.f. 25.06.2012, by the employer/Managing Director, M/s A & A Modular Systems, Village Sansiwala, Barotiwala, Tehsil Kasauli, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. In accordant to the reference the petitioner avers in the statement of claim that she came to be employed as a helper in the respondent company in May 2007. Since then she has been working with full devotion and honesty. The respondent company had started creating labour problems and were frequently violating the labour laws in the company. The petitioner along-with some other co-workers had made a representation before the management regarding their day to day problems.

3. It is further the case of the petitioner that in pursuance to the aforesaid representation the respondent started harassing the petitioner in one way or the other. The respondent had fraudulently with a malafide intention issued a show cause notice to the petitioner blaming her for having wrongly entered the packaging section and when she was directed to join her duties at the sanding section she refused to follow the orders of her superiors and started misbehaving with her superiors. Per the petitioner no show cause notice had been served on her.

4. The respondent company had falsely tried to implicate the petitioner in a false case regarding allegations of quarrel and misbehavior with one of her superior's Shri P.C Dogra. The petitioner on the contrary avers that it was Mr. P.C Dogra and one Shri Raghbir Singh and Mamta Bhatt who had misbehaved with the petitioner.

5. It is further the grouse of the petitioner that the respondent company had appointed one Shri Ram Chander, Advocate Nalagarh as an enquiry officer without the consent of the petitioner. The enquiry officer had also refused the services of a defence assistant to the petitioner while holding the enquiry. The enquiry is further stated to be against the principles of natural justice as no reasonable opportunity of being heard was afforded to the petitioner.

6. It is also the case of the petitioner that no enquiry report was supplied to her by the enquiry officer or the respondent company. The termination of the petitioner is thus stated to be illegal and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The petitioner also claims that since her illegal termination she is unemployed and unable to maintain her family.

7. It is thus prayed that the termination of the petitioner be set aside and quashed and the respondent be directed to reinstate the petitioner with all consequential benefits.

8. While contesting the claim the respondents have raised preliminary objections *vis-à-vis* maintainability and the petitioner having concealed material facts from this Court.

9. It is also averred by the respondent that the petitioner indulged in grave misconduct during the course of her employment. As a sequel the respondent management had held an independent enquiry into the misconduct as per the Industrial Employment (Standing Orders) H.P Rules 1973 and the amended Rules 1991 as applicable to the respondent company. The principles of natural justice had been fully complied with while ordering the enquiry and even the enquiry officer had afforded full opportunity to the petitioner. The enquiry was held in a lawful manner and that the petitioner is gainfully employed and is earning more than the amount which she was earning from the respondent management.

10. On merits too the contentions are reiterated. Per the respondents the petitioner has not approached this Court with clean hands. She has alleged wrong facts. The petitioner had committed grave misconduct on 16.12.2011 inside the factory premises and had quarreled with senior officers of the factory. It was on this score that she had been chargesheeted. As averred in the preliminary submissions the petitioner was chargesheeted and an independent enquiry officer namely Shri Ram Chander, Advocate Nalagarh had been asked to enquire into the matter. The enquiry officer had issued a notice to the petitioner and she had duly participated in the enquiry proceedings. The enquiry was conducted as per the model standing orders and the principles of natural justice were fully complied with. The petitioner was afforded full opportunity to lead her evidence in defence and the statement so given by the petitioner was properly recorded by the enquiry officer.

11. The report submitted by the enquiry officer on 15-5-2012 holding the petitioner guilty ended up with the issuance of a 2nd show cause notice in the shape of proposed penalty letter on 23-5-2012. Eventually dismissal order was passed against the petitioner on 25-6-2012. The respondents have annexed along-with the reply, the complaint, chargesheet, letter of enquiry, notices issued by the enquiry officer and the entire proceedings of the enquiry along-with the report of the enquiry officer, 2nd show cause notice and the dismissal letter.

12. It is thus prayed that the claim be dismissed being devoid of any merits.

13. While filing rejoinder, the petitioner controverted the averments made in the reply and further reiterated those in the statement of claim.

14. I notice that on 26-5-2017, the following preliminary issues came to be framed by my Learned Predecessor.

(1) Whether the domestic inquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ..*OPP*.

(2) Relief

15. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1 : No. However punishment held to be disproportionate and hence quashed and set aside.

Relief : Reference partly answered in favour of the petitioner and against the respondent per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issues No. 1:*

16. Though, the reference pertains to the termination of the services of the petitioner *w.e.f.* 25-6-2012 which is purported to be in violation of the provisions of the Act, but, the case set up by the respondent in uncertain terms is that the petitioner was dismissed from service in pursuance to an independent enquiry held as per the Industrial Employment (Standing Orders) H.P rules 1973, as amended from time to time and as per the principles of natural justice, and that too for having committed grave misconduct within the factory premises on 16-12-2011.

17. As per the allegations in the departmental proceedings on the said date the petitioner and one Balwinder Kaur had quarreled with the senior officer in the factory. They had been asked to report at the sanding section, whereas the petitioner and the other co-worker wanted to work in the packaging section. Per the respondent the petitioner was chargesheeted on 17-12-2011. She was called to file the reply within seventy two hours, but, she had failed to do so. Though, the respondent could have terminated her forth-with, but, keeping in view the principles of natural justice, the management thought it proper to hold an independent enquiry and consequently one Shri Ram Chander, Advocate Nalagarh came to be appointed as an enquiry officer.

18. The enquiry officer RW-1 *vide* his enquiry report Ex. R-10 held the petitioner to be guilty of misconduct. The respondent had thereupon issued a show cause notice in the shape of

proposed penalty letter on 23-5-2012 (Ex. RW-2/B). The petitioner did not file any reply thereof and eventually she came to be dismissed vide an order dated 25-6-2012 (Ex. RW-2/C).

19. Though, the petitioner claims termination simplicitor, but, in the statement of claim the petitioner has tried to portray that the respondent company had fraudulently and with the malafide intention issued a show cause notice to the petitioner regarding some misdemeanor, but she had never been served with any show cause notice. Per the petitioner the respondent company had fabricated a false allegation of quarrel and misbehavior with one of her superior Shri P.C Dogra. It is also the averred case of the petitioner that the enquiry officer was appointed without any consent of the petitioner. The enquiry officer had made no efforts to provide a defence assistant to the petitioner. The enquiry was against the principles of natural justice and no enquiry report was ever supplied to her either by the enquiry officer or the respondent company.

20. This is what the petitioner has also reiterated while appearing as her own witness, as PW-1. Her affidavit on record is nothing but the reiteration of the pleadings on record.

21. Though, the petitioner in her cross-examination has denied that the chargesheet was ever issued to her. She also denies that any enquiry was also held against her. As per the petitioner certain documents were got signed by her. She goes to the extent of denying that RW-1 Shri Ram Chander, Advocate had conducted an enquiry. She even denies having been summoned by the enquiry officer. However, she admits having signed the enquiry proceedings on each and every date. She also denies having received the enquiry report.

22. Per contra the enquiry officer while appearing as RW-1 has deposed that after having been appointed as an enquiry officer he issued notice dated 24-2-2012 and fixed the enquiry on 3-3-2012, but, the petitioner did not join the proceedings. She was again summoned for 20-3-2012, again the petitioner did not join. Fresh notices were issued for 26-4-2012 and the petitioner appeared. It is then the enquiry proceeded further. The enquiry was conducted as per the Model Standing Orders and principles of natural justice and he afforded opportunity to the petitioner to produce any person to defend her case, but, the petitioner had agreed to defend herself personally. She was provided full opportunity to cross-examine the witnesses and the day to day proceedings were supplied to her. After the enquiry he had submitted his report to the management (Ex. R-10) along-with the enquiry proceedings (Ex. R-5). Ex. R-6 to Ex. R-9 are the statement of witnesses examined by him during the course of enquiry.

23. In fact the proceedings initiated on 26-4-2012 also bears the signatures of the petitioner. As per this document the petitioner had agreed to defend her case personally. In fact the perusal of Ex. R-6 to Ex. R-8, the deposition of the witnesses also bear the signatures of the petitioner. The proceedings dated 27-4-2012 also bear the signatures of the petitioner. As per the noting also the copies of the testimonies of PW-1 to PW-3 were supplied to the parties and next date was fixed for 28-4-2012.

24. The 2nd show cause notice had been issued by RW-2 vide Ex. RW-2/B on 23-5-2012. Though, the petitioner denies that the copy of the enquiry report had been supplied to her but the 2nd show cause notice clearly shows that the copy of the enquiry report dated 15-5-2012 (eight pages) had been annexed along-with 2nd show cause notice as is clear from Ex. RW-2/B on record, which has also been duly signed by the petitioner. It is thus clear that even the enquiry report had been supplied to the petitioner.

25. In this sense of the matter it is more than apparent that the domestic enquiry held against the petitioner was valid and as per the requirements of law. One thing which comes to the fore, however, is that the dismissal was ordered on the basis of a verbal spat between the petitioner and one Balwinder Kaur with one Shri P.C Dogra, the incharge of the packaging section. The tiff was apparently that the petitioner wanted to work in the packaging section



whereas she was sent to the sanding section. Over and apart there is nothing which is alleged against the petitioner or the other worker. The moot question thus is whether the order of dismissal in the aforesaid circumstances was justified and was the punishment commensurate with the charged misconduct.

26. Even, if the testimony of the three witnesses who have appeared before the enquiry officer is taken at its face value, I am afraid the order of dismissal was indeed not justified. A verbal spat and that too demanding a change of section did not at least entail the punishment of dismissal. It is indeed unjustified to say the least. Defiance of instructions from the management or a trivial misconduct or a pardonable negligence can certainly not be visited with severe penalty of dismissal from service. It was neither a case of misappropriation, theft or *prima-facie* dereliction of duties. In the given facts and circumstances of the case the punishment of dismissal imposed by the respondent management is shockingly disproportionate to the charge which has been proved before the disciplinary authority. The punishment imposed is too harsh.

27. By now it is fairly well settled that after insertion of section 11-A it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30-4-2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

28. Thus while holding that the respondent has conducted the domestic enquiry as per the model standing orders and the principles of natural justice, it is however held that the punishment imposed by the disciplinary authority is disproportionate to the misconduct alleged. In the facts and circumstances of the case so much so keeping in view the conduct of the petitioner and the allegation in the chargesheet, it is held that she shall not be entitled to any back-wages. The denial of back-wages is sufficient punishment to be imposed upon the workman, for the alleged misconduct dated 16-12-2011. The issue is thus decided accordingly.

**RELIEF:**

For the foregoing reasons discussed hereinabove *supra*, the reference is partly answered in favour of the petitioner and against the respondent while holding that the respondent have conducted the enquiry in a fair manner and as per the provisions of the model standing orders, but, the penalty imposed by the respondent management is however held to be disproportionate and is quashed and set aside. The petitioner is ordered to be reinstated in service. She shall be entitled to seniority and continuity from the date of her dismissal, however, without any back wages. Ordered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette and for further necessary action. File, after completion, be consigned to records.

Announced in the open Court today this 20th day of December, 2019.

Sd/-  
(CHIRAG BHANU SINGH),  
Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.

Sh. Amrik Singh

V/S

M/s Japshi Pharmaceuticals Pvt. Ltd.

20-12-2019

Present : Sh. A.K. Sharma, AR for the petitioner.  
: None for respondent.

The AR for the petitioner submits that the petitioner has already moved the competent court for the recovery of his wages and other legal dues and as such the petitioner does not intend to press the reference any further. A separate statement of the LD. AR in this behalf has been record and place on the file. In view of the aforesaid circumstances arising on record apparently the “dispute” interse the parties does not subsist any further. As a sequel the present reference is dismissed as having not been pressed at this stage. Ordered accordingly. Let, a copy of this order/award be sent to the appropriate Government for publication in the official gazette. File after completion be consigned to records.

Announced

20.12.2019

Sd/-  
Presiding Judge,  
Labour Court, Shimla,  
Camp at Nalagarh.

**IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. 46 of 2016  
Instituted on 17-5-2016  
Decided on 23-12-2019

Ramesh Kumar s/o late Shri Keshav Ram R/o VPO Deola, Tehsil Sunni, District Shimla,  
(H.P.). ..Petitioner.

*VERSUS*

1. State of H.P. through Secretary Department of I & PH Shimla (H.P.)
2. Executive Engineer I&PH Division Sunni, District Shimla (H.P.)
3. Pradhan Gram Panchyat Deola, P.O. Deola, Tehsil Sunni District Shimla (H.P.)  
..Respondents.

**Reference under section 10 of the Industrial Disputes Act**

For petitioner :

For respondent :

### AWARD

The following reference was received for adjudication from the appropriate government:—

**“Whether termination of the services of Shri Ramesh Singh s/o Shri Keshav Ram, Village & P.O Deola, Tehsil Sunni, District Shimla during April 2008 by the Pradhan, Gram Panchayat Deola, Tehsil Sunni, District Shimla, H.P. and the Executive engineer I&PH Division Sunni, District Shimla, HP who was engaged by the Pradhan Gram Panchayat Deola, Tehsil Sunni, District Shimla or carrying out the work of distribution of drinking water in the Gram Panchayat Deola and payment of wages were made by the Executive Engineer I&PH Division Sunni, District Shimla H.P. through the Pradhan Gram Panchayat Deola Tehsil Sunni District Shimla is legal and justified? If not what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”**

2. Shorn of unnecessary details, it is the case of the petitioner that he was appointed as a beldar (part time) by the respondents in the month of November 2006 for Deola Water Supply Scheme under I&PH Sub Division Gumma, Tehsil Sunni, District Shimla. The petitioner worked continuously as such till April 2008 when his services were orally terminated by the respondents No. 1 & 2.

3. It is the case of the petitioner that there were no complaints against him and his services were terminated illegally without following the due procedure of law and even persons junior to him have been retained. He had completed 240 days in the preceding calendar year, prior to his termination.

4. The action of the respondents is thus stated to be in derogation to the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). It is also the grouse of the petitioner that the respondents have replaced him by another temporary person which is also against the settled principles of law. The salary is paid to the petitioner by the respondents No. 1 & 2 and in fact a part of it was received by the petitioner before the conciliation officer duly paid by the respondents No. 1 & 2. Per the petitioner the respondent have also violated the provisions of section 25-N of the Act as no notice as envisaged under the said provision was issued to the petitioner before his disengagement.

5. The workers engaged along-with the petitioner have since been regularized whereas the services of the petitioner were disengaged without any rhyme or reason.

6. The petitioner thus prays that his illegal termination *w.e.f.* April 2008 be quashed and set aside. He be reinstated along-with all consequential benefits including regularization.

7. While contenting the claim the respondents No.1 & 2 have filed joint reply whereas the respondent No.3 has preferred a separate reply.

8. The respondents No.1 &2 have raised preliminary objections *vis-a-vis* maintainability. The petitioner is stated to have no cause of action against the replying respondent as he is stated to have been engaged by respondent No. 3 *i.e.* the Pradhan of the Gram Panchayat Deola, on honorarium basis. The petition is also stated to be not maintainable due to delay and laches as the petitioner has approached this Court after a gap of eight years.

9. On merits too, it is the case of the respondents No.1 & 2 that the petitioner was never an employee of the I&PH department who had been engaged by the Gram Panchayat Deola for distribution of water supply to Village Deola Gulthani. It is denied that his services have been terminated by the respondents No.1 & 2. It is thus denied that the petitioner had completed 240 days.

10. As per the respondents No.1 & 2 the petitioner was only a part time worker of Gram Panchayat Deola. The respondents No.1 & 2 were only the funding agency of the Gram Panchayat. The sole appointing authority of the petitioner was the respondent No.3. The petitioner was never engaged or terminated by the respondents No.1 & 2.

11. Strangely, the respondent No. 3 has also raised a preliminary objection that the claim filed by the petitioner is not maintainable since no relief has been claimed against them.

12. On merits, it is the specific case of the respondent No.3 that the petitioner was appointed by respondents No.1 & 2 to look-after and regulate the Deola Water Supply Scheme/Tank.

13. While filing rejoinder, the petitioner controverted the averments made in the reply filed by respondents No. 1 & 2 and further reiterated those in the statement of claim.

14. I notice that on 29-6-2017, the following issues came to be framed by my Learned Predecessor:

- (1) Whether the termination of the services of the petitioner during April 2008 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..OPP.
- (2) If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..OPP.
- (3) Whether the petition is not maintainable as alleged? ..OPR.
- (4) Relief

15. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No.1	:	Yes
Issue No.2	:	Re-engagement, but prospectively. The petitioner will not be entitled to any seniority, continuity or back-wages.
Issue No.3	:	No
Relief	:	Reference is answered partly in favour of the petitioner and against the respondent per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 & 2:*

16. All these issues being correlated and intermingled are being taken up together for decision.

17. The respondents No.1 & 2 have taken a specific stand that the petitioner was never engaged by the I&PH Department. He was engaged by respondent No.3 *i.e.* the Pradhan Gram Panchayat Deola on honorarium basis. It is thus the case of the respondents No.1&2 that the petitioner was neither engaged nor terminated by them.

18. Strangely, the respondent No.3 also have however, taken a stand that the petitioner was appointed by the respondent No.1&2 to look-after and regulate the Deola Water Supply Scheme.

19. The evidence produced on record however, shows that apparently the petitioner worked on the Deola Water Store Tank from November 2006 to 31-3-2008 with the respondents No.1&2, though, through the agency of the Panchayat as is clear from Ex. RW-1/C and Ex. RW-1/D on record. It seems that in December 2006 *vide* Mark P-3 the State of HP had approved handing over the operation of the distribution system below sector storage tanks to PRIs in 10 % of the Rural Drinking Water Schemes and in this behalf issued detailed guidelines. The management of the said scheme was done through the Panchayat and the funds were also to be released on quarterly basis to the Panchayats to meet O&M expenditure, costs of manpower and energy charges, if any. In pursuance thereto the respondent State entered into an agreement with Gram Panchayat Deola *vide* mark P-2 and it is in pursuance thereto that the petitioner was appointed to run the water Tank to Deola Village.

20. As per the stipulations in the agreement Mark P-2, the funds required to meet out the expenditure on wages of persons appointed by the Gram Panchayat was to be meet by the I&PH Department utilizing the O&M funds available under ARSWSP funds or through State funds.

21. Another advertisement came to be issued by the respondents in the year 2012 *vide* Ex. PW-4/A. As per the said advertisement dated 30-4-2012 one water guard was to be appointed in respect of Gram Panchayat Deola too.

22. The respondents No.1 & 2 apart from denying that the petitioner was ever engaged by them has feebly averred that the petitioner was a part time worker of Gram Panchayat Deola and the respondents No.1 & 2 were only the funding agency of Gram Panchayat, but, no evidence in this behalf has been led to remotely show so. One Hari Dass, Senior Assistant of I&PH Department has been examined as RW-2. Neither the respondent No.2 nor any field officer has entered the witness box to prove the said factum. No evidence worth the name has been led by respondents No.1 & 2 to show that he handling of the water storage was a stop gap arrangement. Even otherwise there is no evidence on record to show that when the post was against re-advertised on 30-4-2012 *vide* Ex. PW-4/A, the petitioner, who was already working, was called for interview or not and why the temporary person had to be appointed against another temporary person. In fact some official working in the field should have been examined by the respondents No.1 & 2 to prove their case. RW-1, Senior Assistant has simply deposed that the petitioner was never engaged by the department. He might have been engaged by respondent No. 3. He has not whispered a word to remotely suggest that the petitioner was a part time worker of the Gram Panchayat and it was based on funds and that too as a temporary arrangement and the department was merely the funding agency. Though, he admits in his cross-examination that the wages were paid through the Pradhan after the verification of the XEN IPH Sunni Division. He however, further admits that Deola Water Supply Scheme is of the IPH Department and that even prior to the year 2012, the workers were being engaged by the department for the aforesaid scheme.

23. Even assuming that the petitioner had been engaged as a part time worker, his services could not have been substituted by another temporary employee. Had the department engaged a regular hand in his place even in that situation the protection of the Industrial Dispute would have been available to the petitioner. The respondents No. 1&2 specifically denies that the petitioner was ever engaged by them. It further confounds the situation. There is specific evidence on record to show that the petitioner had been working on the water scheme, even if as stop gap arrangement. He having worked from 2006 till 2008 had completed 240 days too. The Panchayat *i.e* the respondent No.3 has specifically averred that the petitioner was appointed by respondents No.1&2.

24. In the aforesaid circumstances the respondents No.1 & 2 had to lead specific evidence to prove that the petitioner had been appointed as a stop gap arrangement till a regular hand joins and only the funding was to be done by the IPH Department. The agreement on record between respondent No.1 & 2 and Panchayat also shows to the contrary and so does Ex. RW-1/C and Ex. RW-1/D. The respondents No.1 & 2 having failed to lead any evidence, a presumption is rather created in favour of the petitioner. No field officer has been examined to prove the averments in the reply. Moreover, the complete denial of the relationship of an employer and an employee also raises a presumption to the contrary. Even, assuming that some process had took place in 20102, though, no evidence has been led by the respondents in this behalf. The petitioner even if he was working as a stop gap arrangement in the water scheme, he could not have been substituted by another temporary employee.

25. It is no doubt true that the petitioner has awoken from slumber after about eight years. However, a reference having been made to this Court the same is otherwise required to be answered. Even otherwise, by now it is fairly well settled that in case of delay the Court can and should mould the relief rather than throwing it merely on the grounds of delay and laches alone.

26. For all the aforesaid reasons discussed hereinabove *supra*, it is more than apparent that the action of the respondents in terminating the services of the petitioner was indeed illegal and bad in the eyes of law. The termination of the services of the petitioner during April 2008 is thus set aside and quashed. The respondents No.1 & 2 are directed to re-engage the petitioner forthwith anywhere in IPH Sub Division Sunni as a beldar. Keeping in view the totality of circumstances, more particularly the delay in espousing his cause the petitioner shall not been entitled to any back-wages and even seniority and continuity. Keeping in view the fact that at the inception the petitioner had been engaged in pursuance to some scheme his appointment shall also be prospective in nature. The issues are thus decided accordingly.

**RELIEF:**

For the foregoing reasons discussed hereinabove *supra*, the reference is partly allowed. The respondents No.1 & 2 are directed to re-engage the petitioner forthwith anywhere in IPH Sub Division Sunni as a beldar. Keeping in view the totality of circumstances, more particularly the delay in espousing his cause the petitioner shall not been entitled to any back-wages, seniority and continuity in service. The appointment of the petitioner shall be prospective in nature. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 23rd day of December, 2019.

Sd/-  
(CHIRAG BHANU SINGH),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

Sh. Arun Thakur &amp; Ors.

V/s

M/s Zen Technologies Ltd.

27-12-2019

Present : Sh. Harish Kumar, Proxy Csl. for the petitioner.  
Sh. Pankaj Sawant, Proxy Csl. for respondent.

In view of the order passed by Hon'ble High Court in CWP No. 339 of 2018 *vide* order dated 28-06-2019 the present reference has become redundant as it stands quashed and set-aside by Hon'ble High Court. As a sequel the reference is dismissed as having become Infructuous. Ordered accordingly. Let, a copy of this order/award be sent to the appropriate Government for publication in the official gazette. File after completion be consigned to records.

Announced

27-12-2019

Sd/-

(CHIRAG BHANU SINGH),

Presiding Judge, Labour Court, Shimla,

## शहरी विकास विभाग

## अधिसूचना

शिमला-2, 22 फरवरी, 2020

**संख्या यू0डी0ए0(1)-2/2016-I.**—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश नगरपालिका निर्वाचन नियम, 2015 के नियम 90 के उप नियम (5) के साथ पठित हिमाचल प्रदेश नगरपालिका अधिनियम, 1994 (1994 का अधिनियम संख्यांक 13) की धारा 27 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला सोलन में नगर परिषद् नालागढ़ के बाबत अध्यक्ष के निर्वाचन को निम्न प्रकार से राजपत्र में अधिसूचित करते हैं :—

नगर परिषद् का नाम	निर्वाचित अध्यक्ष का नाम और पता
नगर परिषद् नालागढ़, जिला सोलन	श्री धर्मेन्द्र सिंह राना, वार्ड नंबर-2, नगर परिषद् नालागढ़, जिला सोलन, हिमाचल प्रदेश।

आदेश द्वारा,

हस्ताक्षरित /—  
सचिव (शहरी विकास)।

[Authoritative English text of Notification No.UD-A(1)-2/2019-L, dated 22-02-2020 as required under clause(3) of Article 348 of the Constitution of India].

## URBAN DEVELOPMENT DEPARTMENT

### NOTIFICATION

*Shimla-2, the 22nd February, 2020*

**No. UD-A (1)-2/2016-L.**—In exercise of the powers conferred by sub-section (1) of section 27 of the Himachal Pradesh Municipal Act, 1994 (Act No.13 of 1994) read with sub-rule (5) of rule 90 of the Himachal Pradesh Municipal Election Rules, 2015, the Governor of Himachal Pradesh is pleased to notify in the Official Gazette election of President in respect of Municipal Council Nalagarh, Distt. Solan, H.P. as under:—

Name of Municipal Council	Name & Address of Elected President
Municipal Council, Nalagarh, Distt. Solan	Sh. Dharmender Singh Rana, r/o Ward No.-2, Municipal Council, Nalagarh, Distt. Solan.

By order,

Sd/-  
Secretary (UD).

### In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Balh, District Mandi (H.P.)

In the matter of :—

1. Sh. Varun Kumar s/o Sh. Ram Prakash, r/o Village & P. O. Kullu, Tehsil & District Kullu (H. P.).

2. Smt. Sunakshi d/o Shri Jagdish, r/o Chandyal, P. O. Gagal, Tehsil Balh, District Mandi, H.P. (1) at present w/o Sh. Varun Kumar s/o Sh. Ram Prakash, r/o Village & P. O. Kullu, Tehsil & District Kullu (H. P.).

*Versus*

General Public

**Subject.**—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Sh. Varun Kumar s/o Sh. Ram Prakash, r/o Village & P. O. Kullu, Tehsil & District Kullu (H.P.) and Smt. Sunakshi d/o Shri Jagdish, r/o Chandyal, P. O. Gagal, Tehsil Balh, District Mandi, (H.P.) at present w/o Sh. Varun Kumar s/o Sh. Ram Prakash, r/o Village & P. O. Kullu, Tehsil &



District Kullu (H.P.) under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 04-05-2017 according to Hindu rites and customs at Village & P. O. Kullu, Tehsil & District Kullu (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that if any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 16-03-2020. After that no objection will be entertained and marriage will be registered.

Issued today on 17th February, 2020 under my hand and seal of the court.

*Seal.*

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,  
Balh, District Mandi (H.P.).*

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**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,  
District Mandi (H.P.)**

In the matter of :—

1. Amit Kumar s/o Sh. Shankar Dass, Village Kasan, P.O. Saigaloo, Tehsil Kotli, District Mandi (H.P.).
2. Pooja Devi d/o Sh. Padam Singh, Village Trehar (Koon), P.O. Kot, Tehsil Kotli, District Mandi (H.P.) . . Applicants.

Versus

General Public

*Subject.*—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Amit Kumar s/o Sh. Shankar Dass, Village Kasan, P.O. Saigaloo, Tehsil Kotli, District Mandi (H.P.) and Pooja Devi d/o Sh. Padam Singh, Village Trehar (Koon), P.O. Kot, Tehsil Kotli, District Mandi (H.P.) (at present w/o Amit Kumar s/o Sh. Shankar Dass, Village Kasan, P.O. Saigaloo, Tehsil Kotli, District Mandi (H.P.) have filed an application alongwith affidavits in the court of undersigned under Section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 1-02-2020 according to Hindu rites and customs at their respective houses, Mandi, H.P. and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 17-03-2020 after that no objection will be entertained and marriage will be registered.

Issued today on 15th day of February, 2020 under my hand and seal of the court.

Seal.

Sd/-  
Marriage Officer-cum-Sub-Divisional Magistrate,  
Sadar, District Mandi (H.P.).

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,  
District Mandi (H.P.)**

In the matter of :—

1. Desh Raj s/o Sh. Krishan Lal, Village Sarwari Upperli, P.O. Khadyad, Tehsil Kotli, District Mandi (H.P.).

2. Bhuvneshwari Devi d/o Sh. Lekh Raj, Village Kusmul, P.O. Saletar, Tehsil Kotli, District Mandi (H.P.) . . Applicants.

*Versus*

General Public

*Subject.*—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Desh Raj s/o Sh. Krishan Lal, Village Sarwari Upperli, P.O. Khadyad, Tehsil Kotli, District Mandi (H.P.) and Bhuvneshwari Devi d/o Sh. Lekh Raj, Village Kusmul, P.O. Saletar, Tehsil Kotli, District Mandi (H.P.) (at present wife of Desh Raj s/o Sh. Krishan Lal, Village Sarwari Upperli, P.O. Khadyad, Tehsil Kotli, District Mandi (H.P.)) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 31-01-2020 according to Hindu rites and customs at their respective houses, Mandi, H.P. and they are living together as husband and wife since then. Hence, their marriage may be registered under special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 20-03-2020 after that no objection will be entertained and marriage will be registered.

Issued today on 19th day of February, 2020 under my hand and seal of the court.

Seal.

Sd/-  
Marriage Officer-cum-Sub-Divisional Magistrate,  
Sadar, District Mandi (H.P.).

**समक्ष देवी सिंह कौशल, सहायक समाहर्ता प्रथम वर्ग, तहसील निहरी, जिला मण्डी (हि0 प्र0)**

मिसल नम्बर : 02/2020

तारीख मजरूआ : 22-01-2020

आगामी पेशी : 21-03-2020

प्रार्थना-पत्र नाम दुरुस्ती।

श्री हिमा राम पुत्र श्री हेत राम, निवासी शंगौड, डाकघर निहरी, तहसील निहरी, जिला मण्डी (हि0प्र0)  
प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

श्री हिमा राम पुत्र श्री हेत राम, निवासी शंगौड, डाकघर निहरी, तहसील निहरी, जिला मण्डी (हि0प्र0) ने इस अदालत में एक प्रार्थना-पत्र दायर किया है कि उसका स्व0 पिता श्री हेत राम का नाम राजस्व अभिलेख पटवार वृत्त बाढू के महाल घडोई में जिबू दर्ज है, जबकि उसका सही नाम हेत राम है, लिहाजा इसे दुरुस्त करके जिबू उर्फ हेत राम किया जाए। आवेदन-पत्र की पुष्टि में प्रार्थी द्वारा नियमानुसार अभिलेखीय साक्ष्य प्रस्तुत किए हैं।

अतः इस इशतहार के माध्यम से आम जनता तथा सगे सम्बन्धियों को सूचित किया जाता है कि उपरोक्त नाम दुरुस्ती बारे किसी भी व्यक्ति विशेष व सगे सम्बन्धियों को कोई भी उजर/एतराज हो तो वह दिनांक पेशी 21-03-2020 को सुबह 10.00 बजे इस न्यायालय में अदालतन या वकालतन अपना एतराज अधोहस्ताक्षरी के समक्ष उपस्थित होकर या लिखित रूप में पेश कर सकता है। इस तिथि तक कोई भी एतराज पेश न होने की सूरत में नियमानुसार एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती के आदेश पारित कर दिये जावेंगे व उसके उपरान्त कोई भी एतराज न सुना जाएगा।

आज दिनांक 19-02-2020 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।  
मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता प्रथम वर्ग,  
निहरी, जिला मण्डी (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी औट, जिला मण्डी (हि0 प्र0)**

मिसल नं0 : 3/2020

आगामी पेशी : 19-03-2020

श्री वेद राम पुत्र नूप राम पुत्र मोती राम, निवासी गांव रोपा, डाकघर राहला, तहसील औट, जिला मण्डी (हि0 प्र0)  
प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व रिकॉर्ड में नाम दुरुस्ती करने बारे प्रार्थना-पत्र।

प्रार्थी श्री वेद राम पुत्र नूप राम पुत्र मोती राम, निवासी गांव रोपा, डाकघर राहला, तहसील औट, जिला मण्डी (हि0 प्र0) ने दिनांक 19-02-2020 को इस अदालत में आवेदन-पत्र गुजारा है कि उनका नाम राजस्व अभिलेख में भेद राम गलती से दर्ज हुआ है जबकि पंचायत रिकार्ड व अन्य रिकॉर्ड में उसका नाम वेद राम दर्ज है। प्रार्थी ने इस अदालत से प्रार्थना की है कि तहसील औट, जिला मण्डी के तमाम भू-राजस्व अभिलेख में उनका नाम भेद राम की जगह वेद राम उर्फ भेद राम दर्ज करने हेतु आदेश पारित किया जाए।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दुरुस्त करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी 19-03-2020 को 10.00 बजे हाजिर होकर अपना उजर/एतराज पेश कर सकता है बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिये जाएंगे।

मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता द्वितीय श्रेणी,  
औट, जिला मण्डी (हि0 प्र0)